IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

**CIVIL REVISION APPLICATION NO. 483 OF 2007**

M/s. Honesty Dairy Farm ... Applicant

Versus

Ratilal Govindji Mistry (chhotalia) Respondent

(Org.Plaintiff)

Mr. A.K.Abhyankar, Senior Counsel, with Ms. Indu Prakash, Advocate, i/b. D.K.Tripathi, Advcoate for the applicant.

Mr. Milind Sathe, Advocate with R. Sequira & R.G.Mistry, Advocates for the respondent.

**CORAM: J.H.BHATIA,J.**

**DATE: 22nd November,2007.**

**P.C.**

1. Heard learned Counsel for the applicant-defendant.

2. The respondent-plaintiff is the owner of part of

Survey No.23, Hissa No.2(p) situate at village Magathane, Taluka Borivli, Bombay Suburban District and land admeasuring 50 ft. x 40 ft. According to the plaintiff, the defendant had started unauthorisedly keeping grass/hay/cattlefeed on the open land.The plaintiff took objection to the same. Therefore, on 4.8.1982, under an agreement between the parties, the said piece of land was leased out to the defendant on monthly rent of Rs.175/-. The tenancy was terminated by giving a notice of one month. It is contended that this suit property being an open land is not protected under the Maharashtra Rent Control Act, 1999. Therefore, the plaintiff filed the suit for eviction and possession under Section 41 of the Bombay Presidenvy Small Causes Court Act. It was the defence of the defendant that it is the tenant of the plaintiff in respect of a stable with the shed and this particular piece of land is appurtenant to the said stable with land and therefore it is part of the "premises" within the definition of the Maharashtra Rent Control Act and the suit is not tenable under the Presidency Small Causes Court Act and hence it is liable to be dismissed. The trial Court did not accept the plea of the defendant and taking into consideration the terms of the contract between the parties, decreed the suit for eviction and possession. The Appeal filed by the defendant came to be dismissed. Therefore, the defendant preferred this Revision

Application.

3. The learned Counsel has taken me to the definition of "premises" under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Bombay Rent Act") as well as under the Maharashtra Rent Control Act and also the terms of the lease agreement entered into by the parties in 1982. Suffice it to state that under the Bombay Rent Act, an open land was covered within the definition of ‘premises’ and the Rent Act was applicable. However, a major change has taken place by the Maharashtra Rent Control Act, 1999. Sub- Section (9) of Section 7 of the Maharashtra Rent Control Act, 1999 defines the term ‘premises’ as follows :-

> "(9) "premises" means any building or part of a building let or given on licence separately (other than a farm building) including, -
>
> (i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,
>
> (ii)any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hotel or lodging house;"

From this definition, it is clear that "premises" means any building or part of a building let or given on licence separately including the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building. It necessarily requires that open land should be appurtenant to the building or part of the building which is let out to be protected under the said Act. In the present case, admittedly, the defendant was inducted as a tenant in respect of a stable and shed for tethering their cattle sometime in 1967-1968. The suit land was not part of the stable or the shed. according to the plaintiff, the defendant had unlawfully and unauthorisedly commenced keeping/storing hay, fodder, cattlefeed, etc. on this open land and this was objected to by the plaintiff. Thereafter, a separate lease agreement took place in 1982 and the suit land was leased out to the defendant. From this, it is clear that the suit land was let out under a separate contract and it was never appurtenant to the stable or the shed which was leased out in 1967. Merely because this land is adjoining to the stable or the shed leased out to the defendant, it cannot be said that it is appurtenant to the building in view of the terms of the

contract I find that the suit land is not covered within the definition of "premises" under the Maharashtra Rent Control Act. As such, the land is not protected under the said Maharashtra Rent Control Act and the suit for eviction could be filed under Section 41 of the Presidency Small Causes Court Act.

4. The learned Counsel could not point out any other legal deficiency or perversity in the impugned judgment. Therefore, I find no substance in the revision application.

5. The Revision Application stands dismissed.

6. The learned Counsel for the defendant-applicant makes a request that the defendant may be allowed to continue in possession till the end of February, 2008 and he also makes a statement that the defendant shall file a written undertaking before this Court within two weeks from this date that it shall vacate the land on or before 1st March,2008. The learned Counsel for the plaintiff has no objection. Therefore, subject to the defendant/applicant filing a written undertaking before this Court within two weeks from this date thatit shall vacate the land on or before 1st March, 2008 and shall not create any third party interest in the property, the execution of the decree shall remain stayed till the end

of February, 2008.

**(J.H.BHATIA,J.)**